IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9318 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATGIRI RAMESHGIRI GOSWAMI - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR ASHISH M DAGLI for Applicant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/09/2007

ORAL JUDGMENT

Though served, nobody appears on behalf of respondent No.2, - original complainant. By way of this application u/s 482 of Criminal Procedure Code, the petitioner, - original accused has prayed for an

appropriate order to quash and set aside the complaint/FIR being C.R. No. I 2 of 2005 registered at Gadhada Police Station, as well as charge sheet submitted in the said case before the ld. JMFC, Botad and further proceedings of criminal case No.306/06.

2. A criminal complaint/FIR came to be registered/ filed by the respondent No.2 herein, - original complainant before the Gadhada Police Station against the petitioner for the offence u/s 363, 366 and 376 of the IPC alleging inter alia that the petitioner has abducted/kidnapped Rizwana for the purpose of marriage. That it seems that in the complaint, the complainant has mentioned that age of said Rizwana was 17 years. After investigation, the concerned Investigating Officer has submitted the charge sheet before the ld. Civil Judge (JD) & JMFC, Botad and the criminal case is numbered as criminal case No.306/06. It appears that the statement of said Rizwana@Priti has been recorded on 19-3-06 and said Rizwana has specifically mentioned and/or submitted that she has married with the petitioner on 19-1-06 after completion of 18 years and it was a Court marriage and she has also changed her name from Rizwana to Priti and that she has delivered one baby and that she is residing with the petitioner happily and she has voluntarily gone with the petitioner. A further statement has also been recorded on 27-3-06. the birth date certificate of said baby child is also produced on record. Shri Dagli, learned advocate appearing on behalf of the applicant has submitted

that considering the statement of Rizwana, who is know wife of the petitioner, it cannot be said that the petitioner has committed any offence u/s 363, 366 and 376 of IPC. Therefore, he has requested to quash the complaint.

3. Shri KT Dave, ld, APP has requested to pass appropriate order considering the statement of Rizwana, who is know wife of the petitioner.

4. Heard the learned advocates appearing on behalf of the parties.

5. A criminal complaint/FIR has been filed by the respondent No.2 herein, - original complainant before the Gadhada Police Station against the petitioner for the offence u/s 363, 366 and 376 of the IPC alleging inter alia that the petitioner has abducted/kidnapped Rizwana for the purpose of marriage. It appears from the statement of Rizwana that she has married with the petitioner after completion of 18 years in the year 2004 and it was a Court marriage and that they are residing happily and that they have one baby child. Considering the statement of said Rizwana, it cannot said that the petitioner has committed any offence as alleged and it appears that the impugned complaint has been filed as said Rizwana has run away with the petitioner and it might not be like by the original complainant. Considering the above, to continue with the criminal proceedings against the petitioner would be abuse of process of Court and

unnecessary harassment to the parties, more particularly, the husband and wife i.e. the petitioner and Rizwana, who are staying happily. Under the circumstances, this is a fit case to exercise powers u/s 482 of Criminal Procedure Code to quash the complaint as well as further proceedings.

6. For the reasons stated above, the petition succeeds. The complaint/FIR being C.R. No. I 2 of 2005 registered at Gadhada Police Station, as well as proceedings of criminal case No.306/06 pending in the Court of ld. JMFC, Botad are hereby quashed and set aside. Rule made absolute.

(M.R. Shah, J.)

shekhar/-